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these statutes provision is usually made for recovery of damages for the wrongful death by certain persons, if there be any such surviving the deceased; and then, in default of such surviving beneficiaries, provision is further made in various ways for some final disposition of the damages recovered in the action, no matter what circumstances may exist. It is manifest, therefore, that under these statutes there is no possibility of an entire failure of persons entitled to receive what damages are recovered. Although there may be no survivors of a certain class, there is bound to be, from the wording of the statute, some existing person or agency capable of taking the money recovered. The courts, in construing these statutes, have accordingly held that it is not essential, in order for a cause of action to exist under their provisions, for there to be survivors of any particular class or classes of beneficiaries. And therefore it is not necessary to allege the existence of such survivors in order for the plaintiff's declaration to state a cause of action.[12]

THE DUTY OF A CARRIER TO AWAKEN SLEEPING PASSENGER AT PLACE OF DESTINATION.—As incident to the proper care for the safety and comfort of passengers in alighting from trains, a duty is imposed upon common carriers to announce stations a reasonable time before arrival.[1] But attempts to stretch this obligation

[12] Distributees need not be named where a statute provides that the damages recovered shall be distributed among certain named relatives, if such survive, and if there are none such, then "to be disposed of in the manner authorized by law for the distribution of personal property of deceased persons." The statute then provides that, in default of all above named distributees, the property of the decedent shall escheat to the territory. Whitmer *v.* El Paso & S. W. Co. (C. C. A.), 201 Fed. 193. The same is true where the constitution provides that the general assembly may provide how the recovery shall go, and to whom belong, and until such provision is made the same shall form a part of the personal estate of the deceased (and no such legislative provision has yet been made). East Tenn. Tel. Co. *v.* Simms, 99 Ky. 404, 36 S. W. 171. Likewise where a statute provides that the amount recovered shall be distributed to the parties and in the proportion provided by law in relation to the distribution of personal estate left by persons dying intestate, and that the recovery shall not be subject to any debts or liabilities of the deceased. Searle *v.* Kanawha & O. Ry. Co., 32 W. Va. 370, 9 S. E. 248. Although not directly so decided, the rule in Virginia is probably the same under a statute providing that, in default of designated classes of beneficiaries, "the amount so received shall be assets in the hands of the personal representative to be disposed of according to law." Va. Code 1904, § 2904, p. 110. See Baltimore & O. R. R. Co. *v.* Sherman, 71 Va. 602; Baltimore & O. R. R. Co. *v.* Wightman, 70 Va. 431, 26 Am. Rep. 384.

[1] Texas & N. O. Ry. Co. *v.* Richardson (Tex. Civ. App.), 143 S. W. 722; Central of Georgia Ry. Co. *v.* Carlisle, 2 Ala. App. 514, 56 South. 737; Brooks *v.* Phila. & Reading Ry. Co., 218 Pa. 1, 66 Atl. 872. But where the passenger knows that the station is that of his destination, it is no ground for complaint that there was no announcement. Gulf, C. & S. F. Ry. Co. *v.* Bagby (Tex. Civ. App.), 127 S. W. 254.

so as to require railroads to awaken those passengers asleep in ordinary coaches on arrival at their destination, have been generally rejected and it has been held that the carrier is not liable beyond the necessary calling out of the station.[2] The reason for not placing such an obligation upon the railroads is manifest; the giving of such detailed personal notice would be an unreasonable requirement and moreover, because of the delay occasioned thereby, would greatly impair the service to the public generally. Regulations are made for the traveling public and should be reasonable as adapted to the convenience of the public. So it is that undoubtedly carriers, as a general rule, owe sleeping passengers no duty to awaken them at their destination.[3]

The care due sleeping car passengers in this respect is greater and the rule is that they are due such consideration.[4] They have paid extra fare for special accommodations, and their contract with the car company, from its very nature establishes the duty of awakening the sleeping traveler at the proper time since there is an invitation to sleep. Likewise, the railroad company, liable for the car company's failure to perform its duty for the safety of passengers,[5] is responsible for the car company's default in this particular.[6]

Where the sleeping passenger is under disability or infirm in some way, the courts are not so much at one as to the attention that should be accorded him by the carrier. Great complication and confusion is engendered in these cases by the fact that the courts are much in conflict on the question of whether more than

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[2] Chicago & Alton Ry. Co. *v.* Meyer, 127 Ill. App. 314; Central of Ga. Ry. Co. *v.* Crane (Ala.), 65 South. 866; Missouri, K. & T. Ry. Co. *v.* Kendrick (Tex. Civ. App.), 32 S. W. 42. Even though the conductor expressly promises the passenger to awaken him, the carrier is not liable. Nunn *v.* Georgia Ry. Co., 71 Ga. 710, 51 Am. Rep. 284; Sevier *v.* Vicksburg, etc., Ry. Co., 61 Miss. 8, 48 Am. Rep. 74; St. Louis S. W. Ry. Co. *v.* McCullough (Tex. Civ. App.), 33 S. W. 285; Nichols *v.* Railroad Co., 90 Mich. 203, 51 N. W. 364. So where proper calling of the station and time for alighting have been given, the carrier is under no obligation to carry a passenger who has failed to leave the train, to the next station free of charge, and such person may be ejected from the train for failure to pay extra fare. Ry. Co. *v.* James, 82 Tex. 306, 18 S. W. 589, 15 L. R. A. 347.

[3] Nor is the carrier liable for failure to make the necessary announcement when the passenger was asleep and because of this it cannot be clearly shown that the sleeper was mislead by the omission of the calling out of the station. Seaboard, etc., Ry. Co. *v.* Rainey, 122 Ga. 307, 50 S. E. 88.

[4] Airey *v.* Palace Car Co., 50 La. Ann. 648, 23 South. 512; McKeon *v.* Ry. Co., 94 Wis. 477, 69 N. W. 175, 35 L. R. A. 252, 59 Am. St. Rep. 910; Pullman Co. *v.* Smith, 79 Tex. 468, 14 S. W. 993, 13 L. R. A. 215; Pullman Co. *v.* Lutz, 154 Ala. 517, 45 South. 675.

[5] Cleveland R. Co. *v.* Walrath, 38 Ohio St. 461, 43 Am. Rep. 433; Louisville R. Co. *v.* Ray, 101 Tenn. 1, 46 S. W. 554; Thorp *v.* New York Cent. Ry. Co., 76 N. Y. 402, 32 Am. Rep. 325; Mize *v.* Southern R. Co. (Ga. App.), 82 S. E. 925.

[6] McKeon *v.* Chicago, etc., R. Co., *supra.*

usual care is due any passenger because he is infirm and to what extent such liability, when allowed, may be carried. There is respectable authority which holds that the doctrine calling for the highest possible care on the part of the carrier towards passengers, includes or makes necessary special attention to passengers under some disability when the carrier has notice of the disability under which he is laboring.[7] These cases in a large degree, however, seem to depend upon their own particular and peculiar facts and hence this view can in no wise be said to be general in its application. The true ground for such holding seems to be that in creating the relation of carrier and passenger with full knowledge of the risk attendant on account of the condition of the person accepted, the carrier expressly assumes the risk for any harm which may arise to such passenger for failure to furnish him the care necessary to his physical condition.[8] When the infirmity of the passenger comes to the carrier's notice subsequent to the creation of the relation of passenger and carrier it has been held that the company is not liable.[9] When the illness arises during the journey it is obvious that a different case is presented and the authorities seem well in accord that the passenger must have special care.[10] The general rule in the usual case, however, seems to be that the increased risk arising from conditions of health, age or other infirmity affecting the fitness of such person to travel, must be assumed by the passenger, especially where the abnormal condition is unknown to the carrier.[11] Duties for the safety and comfort of travelers are imposed in contemplation of the average passenger and it is unreasonable that such duties should be created and enforced further than to meet these requirements. When one travels and is not able to do so in safety and comfort under those conditions under which the ordinary traveler does, he travels at his own peril. It is said that such persons must provide themselves with proper assistants and whatever else beyond that which a normal person would require. One case has pertinently stated the situation thus: "Railroad cars are not traveling hospitals, nor their employees nurses. Sick persons have the right to enter the cars of a railroad company; as common carriers of passengers they cannot prevent their entering the cars. If they are incapable of taking care of themselves,

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[7] Weightman *v.* Louisville, etc., R. Co., 70 Miss. 563, 12 South. 586. Greater care of child passenger. Sheridan *v.* Brooklyn, etc., R. Co., 36 N. Y. 39, 93 Am. Dec. 490. But *contra*, see Gage *v.* Illinois Cent. R. Co., 75 Miss. 17, 21 South. 657. And numerous cases of special care due blind persons. Georgia, etc., Co. *v.* Rives, 137 Ga. 376, 73 S. E. 645, 38 L. R. A. (N. S.) 564; Hanks *v.* Chicago & Alton R. Co., 60 Mo. App. 274.

[8] Weightman *v.* Louisville, etc., R. Co., *supra*.

[9] Cf. Weightman *v.* Louisville, etc., R. Co., 70 Miss. 563, and Sevier *v.* Vicksburg, etc., R. Co., 61 Miss. 8.

[10] Connelly *v.* Crescent, etc., R. Co., 41 La. Ann. 57, 17 Am. St. Rep. 389; McCann *v.* Newark, etc., R. Co., 58 N. J. 642, 33 L. R. A. 127.

[11] New Orleans, etc., R. Co. *v.* Statham, 42 Miss. 607, 97 Am. Dec. 478; Gage *v.* Illinois Cent. R. Co., 75 Miss. 17.

they should have attendants along to care for them or to render them such assistance as they may require in the cars and to assist them from the cars at the point of their destination." [12]

From a view of the authorities and the principles involved, the holding that a passenger under some infirmity sleeping in an ordinary day coach has no more right to be awakened than any other passenger, seems eminently sound.[13] It is true that extreme circumstances known to the carrier or the unexpected development of the illness during transit may change the case,[14] but under normal conditions the mere fact of the disability creates no extra obligation upon the railroad. A recent case, *Gilkerson* v. *Atlantic Coast Line R. Co.* (S. C.), 83 S. E. 592, has gone further than most decisions and though no extenuating circumstances existed there was a recovery from the carrier. A tired passenger because of the likelihood of sleep overcoming him obtained the promise of the conductor to awaken him. He was not awakened and was carried beyond his destination. The liability of the railroad company was established upon the grounds that the passenger in being tired and giving the train official notice of the same, as a matter of right became entitled to be awakened as a part of the carrier's duty in aiding him to alight.[15]

RIGHT OF A SOCIAL CLUB TO SELL INTOXICATING LIQUOR TO ITS MEMBERS OBTAINING A LICENSE.—At first glance, the question as to the right of a social club to sell intoxicating liquor to its members without first obtaining a license would seem to be in hopeless confusion. Indeed this is the only point upon which the courts appear to have agreed. There has even been a difference of opinion as to where the weight of authority lies.[1] If we accept the *dicta* of the courts, and the expressions of text-writers and annotators as law, then it is impossible to formulate any general rules governing the subject, but fortunately the actual decisions of the courts are far from being as conflicting as those who rendered them seem to have thought.

There has been an unfortunate disagreement as to the test to be applied to these cases. Some of the courts seem to have regarded the *bona fides* of the club as controlling,[2] but the majority justly

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[12] New Orleans, etc., Co. *v.* Stratham, *supra.*

[13] Sevier *v.* Vicksburg, etc., R. Co., *supra.*

[14] Connelly *v.* Crescent, etc., R. Co., *supra.;* McCann *v.* Newark, etc., R. Co., *supra.*

[15] The promise of the conductor to awaken a passenger riding in a day coach is beyond his authority, and the railroad company is not liable for his failure to do so. Nunn *v.* Georgia Ry. Co., *supra.*

[1] Compare BLACK., INTOXICATING LIQUORS, § 142, and the note in 10 AM. & ENG. ANN. CAS. 386.

[2] Seim *v.* State, 55 Md. 566, 39 Am. Rep. 419; and see State *v.* St. Louis Club, 125 Mo. 308, 28 S. W. 604, 26 L. R. A. 573.